

# **EXHIBIT 5**

**2/7/2018 GL Letter to WBD (Non-Confidential Excerpt)**

**DUKE'S REPLY BRIEF IN SUPPORT OF MOTION FOR  
SANCTIONS**



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**Via email: Jim.Cooney@wbd-us.com**  
**& U.S. Mail**

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Re: Discovery Issues - USA, ex rel. Joseph M. Thomas v. Duke University, et al.  
Case No.: 1:17-cv-00276

Dear Jim:

Thank you for your February 2 response to my letter of January 30. As I mentioned in our conversation Monday, I am still no clearer than I was before; and I would like to ask you to look at the privilege issue again.

As you likely know, my role in this case is related almost exclusively to trial issues. I was not involved substantively prior to depositions starting; and I have no involvement with the settlement discussions or meetings. This may leave me in need of a bit more information than you find necessary, but I ask your indulgence in light of the circumstances created by your initial letter, which we discussed on the phone. I would greatly appreciate your assistance in helping me better understand exactly the additional information that you seek; whether it is logically tied to the request; and whether a more targeted response might satisfy your concerns.

So, my initial approach was to attempt to determine what specific communications (as reflected in the Interrogatory Answers) Duke believes are privileged and what is the claimed specific privilege. I can then cross reference these to the emails we received from the client.

In that regard, your response indicates that there were five privileged communications referenced in your January 23 letter. However, I do not believe that to be clear at all; and the context of your January 23 letter seems to bear that out. On the bottom of page 1 of your January 23 letter, you reference two interrogatory entries, June 3, 2013 and June 4, 2013. As I understood your letter, this reference was simply to show that Mr. Thomas was aware of